

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1318

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
UNITED STATES OF AMERICA

Appellee

Docket No. 77-1318

-against-

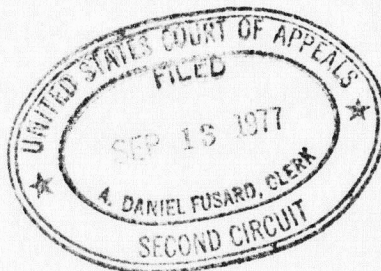
PETER JAKAKAS

Appellant

----- X

Bp/s

APPENDIX



JOHN C. CORBETT
Attorney for Appellant
PETER JAKAKAS
Office & P.O. Address
66 Court Street
Brooklyn, New York 11201

PAGINATION AS IN ORIGINAL COPY

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BOOK 531

70 331

2

18:842(a)(1)(i)
922(a)(1)371 8 2

Did engage in the business of dealing in explosives without having obtained a license, etc.

2

**SUPERSEDING
COUNTS**

IV. KEY DATES & INTERVALS

[illegible]

U.S. Attorney or Asst

Lee Adlerstein

JOHN C. CORBETT
66 Court Street,
Brooklyn, New York
11201

Self. ☐ None / Other. ☐ PD. ☐

2-3494

BAKER 1

APPOINTED

EXCLUDABLE

(a) 1 (b)

8-19-76 Before Pratt, J - Indictment filed
8/26/76 Letter to deft from Judge Mishler stating that the date for pleading has been adjd to 9/3/76 at 10:00 a.m. The Judge has appointed Marion Seltzer, from L.A.S. to represent the deft.

8/26/76 Before MISHLER, CH. J. - Case called. Deft & Counsel not present. Court to assign counsel for deft. Case adjd to 9/3/76 at 10:00 a.m. for pleading.

8/31/76 Before MISHLER, CH. J. - Case called. Deft & Counsel not present. Govts application for Bench Warrant granted. Bench Warrant ordered with conditions that Magistrate in Florida fix bail at \$5,000 P.R.B. Deft depart by air for N.Y. to arrive no later than noon on 9/2/76 and report to Legal Aid. Deft to appear in court on 9/3/76 at 10:00 a.m. Govt to sup deft with round trip air transportation from Florida to N.Y.

8/31/76 Bench warrant issued.

9/3/76 Before MISHLER, CH. J. - Case called. Deft & Counsel present. Deft arraigned and entered a plea of not guilty. Bail condition

as to the defendant directed to pay round trip transportation for deft from Florida for trial. Case adjd to 10/12/76 at 10:00 a.m. for trial.

9-10-76 Bench Warrant returned and filed - executed.

9/16/76 Appearance bond for 86-191 received from District of Florida Tampa Divison filed.

10/12/76 Before HATT, J. - Case called. Deft not present. Counsel present. Bench warrant vacated on Miss Seltzer's representation that deft will appear for trial. Trial set down for 10/26/76 at 9:30 a.m.

10/8/76 M

10-19-76 Bench warrant returned and filed. - unexecuted

10/19/76 Notice of motion to suppress returnable 10/26/76 at 10:00 a.m. filed.

10-19-76 Before Platt, J - case called - deft & counsel present - defts ex parte motion for issuance of subpoenas granted - Judge ordered motions(3) and 2 certified copies of Order sealed - Trial set down for Oct. 26, 1976 at 9:30 am.

10/21/76 Notice of motion to dismiss the indictment pursuant to Rule 12(b) returnable 10/26/76 at 10:00 a.m. filed.

10/22/76 Notice of motion to sever pursuant to Rule 12(b)(5) and 14, returnable 10/26/76 at 10:00 a.m. filed.

10-26-76 Before Platt, J.- Case Called. Deft. & Counsel Present. Deft's motion to suppress. Hearing continued to 10-27-76 at 9:30 A.M.

11-4-76 Govts Memorandum of Law filed

11-12-76 Defts Memorandum of Law filed.

12-3-76 Government's Supplemental Memorandum of Law filed and forwarded to Chambers.

12-6-76 Government's Supplemental Memorandum of Law filed and forwarded to Chambers.

12-10-76 By PLATT, J. - Memorandum and Order dtd 12-10-76 granting deft's motion to suppress filed.

12-15-76 Stenographer's Transcripts dated October 26, 1976 and October 27, 1976 filed.

12-16-76 Letter filed received from AUSA to Judge Platt dated November 22, 1976 In lieu of a reply memorandum of deft's. motion to suppress. (forwarded to Chambers)

12-29-76 Notice of Motion for Continuance filed.

12-29-76 Notice of Motion for Issuance of Subpoena filed.

12-29-76 Notice of Motion for Issuance of Subpoena filed.

12-29-76 By Platt, J.- Order filed that subpoenas be issued for the witness and that the costs of such process and the fees continued....

BEST COPY AVAILABLE

JAKAKAS, PETER

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
	(Document No.) continuation..... and expenses of the witness so subpoenaed, shall be paid as if subpoenaed on behalf of the government				
12-29-76	By Platt, J.- Order filed that subpoenas be issued for the witness named and that the costs of such process and the fees and expenses of the witness so subpoenaed, shall be paid as if subpoenaed on behalf of the Govt.				
12-30-76	Before Platt, J.- Case Called. Deft's. motion for adjdment. of Trial date granted without objection. Trial set down for 2-22-77 at 9:30 A.M.				
			12-30-76 M		
2/22/77	Before PLATT, J. - Case called Deft & ounsel present. Trial ordered and begun. Jurors selected ans sworn. Trial continued to 2/23/77 at 10:00 a.m.				
2.23.77	Before Platt, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. opens. Deft. opens. Hearing ordered and begun. Hearing concluded. On motion of Govt. and Deft. Juror #11 is excused by the Court and Alt. #1 is substituted. Trial continued to 2.24.77 at 10:00 A.M.				
2.24.77	Before Platt, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft's. motion to dismiss Counts (1) and (2) - Denied. Deft's. motion for a mis trial - Denied. Trial continued to 2.28.77 at 9:30 A.M.				
2.28.77	Before Platt, J.- Case Called. Deft. & Counsel present. Deft. rests. Govt. rests. Deft. renews motions to Dismiss Motion denied. Govt. sums up. Deft. sums up. Rebuttal by Ms. Shepard. Judge Charges Jury. Deft renews motion to dismiss count (4). Motion denied. Alternate excused Marshals sworn. Jury retires for deliberations at 1:00 P.M. Jury is excused to 3.1.77 at 10:00 A.M. to resume deliberations.				
3.1.77	By Platt, J.- Order of Sustenance filed.				
3-1-77	Before PLATT, J - case called - trial resumed - Jury returns with a verdict finding the deft guilty on cts. 1 2 and 3 and not guilty on count 4 guilty on count 5 - trial concluded defts motion for mistrial is denied as not timely made defts motion for continuance of bail argued - granted - Bail set at \$2,000 PRB., on condition that 1) that the defts wife sign Personal Recognizance Bond 2) that deft be under supervision of the Probation Dept. in Orlando, Fla and that he report there once a week Defts motion to set aside the verdict is denied - sentence adjd without date.				
	over.....				

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
4.29.77	Before Platt, J.- Case Called. Deft. & Counsel present. IT IS ADJUDGED on Count 1 of the Indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 5 years and that deft. shall become eligible for parole under T-18, U.S.C., Section 4205(b)(2) at such time as the Parole Commission may determine. IT IS ADJUDGED on Count 3 of the Indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 5 years and that deft. shall become eligible for parole under T-18, U.S.C., Section 4205(b)(2) at such time as the Parole Commission may determine, such sentence to be served concurrently with the Sentence imposed in Count 1. IT IS ADJUDGED on Count 2 of the Indictment that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 5 years, the execution of the said sentence of imprisonment is hereby suspended and the deft. placed on probation for a period of 5 years, such sentence to run consecutively to the sentence imposed on Counts 1 and 3. IT IS ADJUDGED On Count 5 of the Indictment that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of 1 year and that deft. shall become eligible for parole under T-18, U.S.C., Section 4205(b)(2) at such time as the Parole Commission may determine, such sentence to be served concurrently with the sentences imposed on Counts 1 and 3. Bail continued (\$10,000.00 F.R.B.) pending appeal.				
4.29.77	Judgment and Commitment filed. Certified Copies to Marshal and probation.				
6/13/77	Before Platt, J-case called-on motion of AUSA Shepard B/W for deft is ordered.				
6/13/77	B/W issued.jlj				
6/21/77	Sten's transcript dtdx 8/26/76 filed.jlj				
6/21/77	Sten's transcript dtd 12/30/76! 2/22/77;2/23/77;2/24/77; 2/28/77;3/1/77;4/29/77;8/31/76 filed.jlj				
6-24-77	Notice of motion filed for failing of notice of appeal nunc pro tunc. (forwarded to Chambers)				
6-24-77	Notice of motion filed pursuant to 28:2255 for vacating sentence imposed. 77 C-1334 relates.				
6-28-77	Supplemental 2255 motion filed and forwarded to Chambers.				
6/30/77	Memo of law filed.jlj				
7/1/77	Before Platt, J-casecalled-deft reported a fugitive counsel present-def't's motion for an order extending time in which to file notice of appeal-denied for leave of jurisdiction-petitioner's motion pursuant to T.18 2255-decision reserved.jlj				
7/6/77	By Mishler, Ch J-writ issued.jlj				

UNITED STATES DISTRICT COURT PETER JAKAKIS
CRIMINAL DOCKET U. S. vs

76 531 2
Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7-7-77	Supplemental Memo of Law filed.				
7-13-77	Letter filed dated 7-12-77 fx received from Chambers re 28:2255 motion.				
7-22-77	Notice of appeal filed as per direction of the Court.				
7-22-77	Before Platt, J - case called - deft & atty present - defts motion to vacate sentence and for re-sentence is granted. Court vacates sentence previously imposed and deft is resentenced. Deft sentenced 5 5 years imprisonment on count 1; 5 years on count 3 under 18:4205(b)(2) - sentences to be served concurrently. Deft sentenced on count 2 to imprisonment for 5 years execution of sentence is suspended and the deft is placed on probation for 5 years, such sentence to run consecutively to the sentence imposed on counts 1 and 3: deft sentence on count 5 to one years imprisonment under 4205(b)(2), such sentence to be served concurrently with the sentences imposed on counts 1 and 3. Clerk to file Notice of appeal/ Bail set at \$100,000 surety pending appeal - bail hearing set down for 7-26-77 at 2: PM.				
7-22-77	Judgment and commitment and order of probation filed - certified copies to probation & Marshal.				
7-22-77	Docket entries and duplicate of notice mailed to the court of appeals.				
7.25.77	By Platt, J.- Order appointing Counsel filed.				
7-26-77	Before Platt, J - case called - deft & atty John Corbett present - defts motion for reduction of bail argued - decision reserved - bail contd - adjd without date.				
7/29/77	By Platt, J-Order that the deft shall be released pending his appeal to the custody of the community treatment center as soon as maximum space is available at that facility etc.]l]				
8-3-77	Scheduling Order filed that the record on appeal be docketed on or before August 16, 1977.				
8-5-77	Memorandum filed re deft's sentencing minutes - On count 2 the term of imprisonment was inadvertently described "10 years, suspended, etc." It should be corrected to read "5 years, suspended, etc." The sentence minutes, as corrected, are a true and accurate record of the proceeding herein described. (signed by Maurice Scott Davis, Court Reporter)				
8-8-77	Voucher for expert services filed and forwarded for payment				

gp

TRP:LAA:mb
F#761,488

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

REC-581

----- X

UNITED STATES OF AMERICA

I N D I C T M E N T

-against-

Cr. No.
(T.18, U.S.C., §§842(a)(1)
and (j), 922(a)(1), 371,
and 2)

DENNIS T. BAKER and
PETER JAKAKAS,

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

Defendants.

----- X

AUG 19 1976

THE GRAND JURY CHARGES:

TIME A.M.....
P.M.....

COUNT ONE

On or about and between the 13th day of December 1975 and the 5th day of April 1976, such dates being approximate and inclusive, the defendants DENNIS T. BAKER and PETER JAKAKAS, did, within the Eastern District of New York, engage in the business of dealing in explosive materials, to wit: TNT, neither defendant having obtained a license issued pursuant to Chapter 40, Title 18, United States Code. (Title 18, United States Code, Sections 842(a)(1) and 2).

COUNT TWO

On or about and between the 13th day of December 1975 and the 5th day of April 1976, such dates being approximate and inclusive, within the Eastern District of New York, the defendants DENNIS T. BAKER and PETER JAKAKAS, neither of whom were at such times a licensed importer, licensed manufacturer, or licensed dealer, did engage in the business of dealing in firearms and ammunition. (Title 18, United States Code, Sections 922(a)(1) and 2).

-2-

COUNT THREE

On or about and between the 13th day of December, 1975 and the 5th day of April, 1976, such dates being approximate and inclusive, the defendants DENNIS T. BAKER and PETER JAKAKAS did combine, conspire, confederate and agree together to commit an offense against the United States in violation of Title 18, United States Code, Sections 842(a)(1) and 2 by conspiring to engage in the business of dealing in explosive materials, to wit: TNT, neither defendant having at such times a license issued pursuant to Chapter 40, Title 18, United States Code.

In furtherance of the said conspiracy and in order to effectuate the purposes thereof, there was committed the following.

OVERT ACT

1. On or about the 13th day of December, 1975, within the Eastern District of New York, the defendants DENNIS T. BAKER and PETER JAKAKAS met together. (Title 18, United States Code, Section 371).

COUNT FOUR

On or about and between the 13th day of December, 1975 and the 5th day of April, 1976, such dates being approximate and inclusive, the defendants DENNIS T. BAKER and PETER JAKAKAS did with Valerie Jakakas, named herein as a co-conspirator but not as a co-defendant, none of whom were at such times a licensed importer, licensed manufacturer or licensed dealer, combine, conspire, confederate and agree together to commit offenses against the United States in violation of Title 18, United States Code, Sections 922(a)(1) and 2 by conspiring to engage in the business of

dealing in firearms and ammunition.

In furtherance of the said conspiracy and in order to effectuate the purposes thereof, there was committed the following:

OVERT ACT

1. On or about the 12th day of January, 1976, within the Eastern District of New York, the defendants DENNIS T. BAKER and PETER JAKAKAS met together with Valerie Jakakas.

COUNT FIVE

On or about the 13th day of December, 1975, within the Eastern District of New York, the defendant PETER JAKAKAS did store explosive material, to wit: TNT, in a manner not in conformity with regulations promulgated by the Secretary of the Treasury or his delegate. (Title 18, United States Code, Sections 842(j) and 2).

A TRUE BILL

Joyce La Pina
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

0576 9

Charge of the Jury

1 3
2 THE COURT: Now ladies and gentlemen I am going
3 to give you instructions on the law applicable to the
4 case. It's my practice to read the instructions to
5 you on the law. You realize this requires more
6 concentration on your part, but it also minimizes the
7 risk for error when I do it this way, so you'll have
8 to bear with me and do your best to follow. If my
9 voice starts to fall or if I am reading too fast, just
10 let me know, raise your hand, or otherwise let me know
11 that you're not getting it all.

12 Now that you have heard the evidence and the
13 argument, it becomes my duty to give the instructions
14 of the Court as to the law applicable to this case.

15 It is your duty as jurors to follow the law
16 as stated in the instructions of the Court, and to
17 apply the rules of law so given to the facts as you
18 find them from the evidence in the case.

19 You are not to single out one instruction
20 alone as stating the law, but must consider the
21 instructions as a whole.

22 Neither are you to be concerned with the
23 wisdom of any rule of law stated by the Court.

24 Regardless of any opinion you may have as to what
25 the law ought to be, it would be a violation of your

Charge of the Court

sworn duty to base a verdict upon any other view of the law than that given in the instruction of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other considerations not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of such individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the instructions of the Court.

You have been chosen and sworn as jurors in this case to try the issues of fact presented by the allegations of the indictment and the denial made by the "Not-Guilty" plea of the accused. You are to perform this duty without bias or prejudice as to any party. Again the law does not permit jurors to be governed by sympathy, prejudice, or public opinion. Both the accused and the public expect that you will carefully and impartially consider all the evidence in

Charge of the Jury

the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

I am not sending the exhibits which have been received in evidence with you as you retired for your deliberations. You are entitled, however, to see any or all of the exhibits as you consider your verdict. I suggest that you begin your deliberations and then, if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the deputy marshals that are stationed outside your jury room door.

Similarly, I caution you with respect to the suggestions made by Miss Meltzer during her summation, that you have testimony read back, in the same fashion. That, you have to consider the instructions as a whole, you should consider the evidence as a whole, and if you come in and ask for individual piece of testimony read back, you are going to highlight that testimony beyond all others. It is your duty to consider the instructions as a whole and the testimony and the exhibits as a whole, so that before asking for individual bits of testimony re-read which may just highlight those portions at the expense of all others, give it a proper try to reach a verdict based upon all

Charge of the Court

that you have heard, all of the evidence in the case.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence -- such as the testimony of an eyewitness. The other is circumstantial evidence -- the proof of facts and circumstances which rationally imply the existence or non-existence of other facts because such other facts usually follow according to the common experience of mankind. By way of example, the footprint of a man in the sand implied to Robinson Crusoe that there was another man with him on the desert island and indeed there was, the man Friday. Thus on the one hand you may have direct evidence of the issue and on the other hand you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily of better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt both on the direct and circumstantial evidence. At times the Jury might feel that circumstantial evidence is of better quality. At other times they may feel direct

Charge of the Jury

evidence is of better quality. That judgment is left entirely to you.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury be satisfied of the defendant's guilty beyond a reasonable doubt from all the evidence in the case.

The law presumes the defendant to be innocent of crime. Thus a defendant, although accused, begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt does not mean a doubt

Charge of the Court

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arbitrarily and capriciously asserted by a juror because of his or her reluctance to perform an unpleasant task. It does not mean a doubt arising from the natural sympathy which we all have for others. It is not necessary for the Government to prove the guilt of the defendant beyond all possible doubt. Because if that were the rule, very few people would ever be convicted. It is practically impossible for a person to be absolutely sure and convinced of any contraverted fact which, by its nature, is not susceptible of mathematical certainty. In consequence the law says that a doubt should be reasonable doubt, not a possible doubt.

A reasonable doubt is a doubt based upon reason and common sense, the kind of doubt that would make a reasonable person to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

Turning now to the indictment itself. It is charged in Count 1 of the indictment, that on or about and between the 13th day of December, 1975 and the 5th day of April, 1976, such dates being approximate

Charge of the Court

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and inclusive, the defendant Peter Jakakas and one
Dennis T. Baker, did, within the Eastern District of
New York, engage in the business of dealing in explosive
materials, to wit, TNT, said defendant not having
obtained a license issued pursuant to Chapter 40,
Title 18, United States Code, all in violation of
Title 18 United States Code, Sections 842(a)(1) and (2).

Now, Section 842 (a)(1) of Title 18 of the
United States Code provides in pertinent part that
"It shall be unlawful for any person to engage in the
business of importing, manufacturing, or dealing in
explosive materials without a license issued under
this Chapter." Section Number Two of Title 18 of the
United States Code provides that, "Whoever commits an
offense against the United States or aids, abets or
counsels, commands or induces or procures its commis-
sion, is punishable as a principal. Whoever willfully
causes an act to be done which if directly performed
by him or another would be an offense against the
United States, is punishable as a principal."

The following are the essential elements of
the crime which the Government must prove beyond a
reasonable doubt in order to establish the first
offense charged in the indictment. One, that the

defendant was engaged in the business of dealing in explosive materials. Two, that the defendant did not have a Federal Firearms license as an importer, manufacturer or dealer and three, that the defendant acted knowingly and willfully.

Now, the charge in Count Number 2 of the indictment is that on or about and between the 13th day of December 1975 and the 5th day of April 1976, such dates being approximate and inclusive, within the Eastern District of New York, the defendant Peter Jakakas and one Dennis T. Baker, neither of whom were at such times a licensed importer, licensed manufacturer or licensed dealer, did engage in the business of dealing in firearms and ammunition all in violation of Title 18 United States Code Sections 922(a)(1) and (2). Now, I just read you Section 2 of Title 18, that's the aiding and abetting section.

Section 922 (a)(1) of Title 18 United States Code provides in pertinent part that, "It shall be unlawful for any person, except for a licensed importer, licensed manufacturer or licensed dealer to engage in the business of importing, manufacturing or dealing in firearms or ammunition."

The following are the essential elements of the

crime which the Government must prove beyond a reasonable doubt in order to establish the offense alleged in Count 2 of the indictment. One is that the defendant was engaged in the business of dealing in firearms and ammunition. Two, that the defendant did not have a Federal Firearm license as an importer, manufacturer or dealer and three, that the defendant acted knowingly and willfully.

Now, Section 841 of Title 18 of the United States Code defines explosive materials to mean explosives, blasting agents or detonators. And, a dealer is defined as any person engaged in the business of distributing explosive material or firearms, as the case may be, at wholesale or retail.

The term explosive means any chemical compound mixture or device, the primary or common purpose of which is to function by explosion and the term includes, but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

The term blasting agent means "any material or mixture consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive," and

Charge of the Court

the term detonator means "any device containing a detonating charge that is used for initiating detonation in an explosive," and that term includes but it is not limited to, electric blasting caps of instantaneous and delayed types, blasting caps for use with safety fuses and detonating cord delay connectors.

The term firearm is defined as "any weapon which will or is designed to may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer or any destructive device. Such term does not include an antique firearm." the term "ammunition" means, "ammunition or cartridge cases, primers, bullets or propellant powder designed for use in any firearm."

A person is engaged in the business of dealing in explosives or firearms if he either has explosives or firearms on hand or is ready and able to procure them and sell them to such persons as might accept them as customers.

Dealing or business activity is that which occupies time, attention and effort, but the law does not require that the dealing or business activity be the defendant's primary business or activity or that

it be on a profit making basis.

The use of the term "wholesale" or "retail" does not necessarily have the connotation of an open business. It can be clandestine and somewhat sporadic. No minimum number of sales must be shown. While one sale alone may not be sufficient to evidence that a person was dealing in explosives or firearms, one sale together with other facts, circumstances and compensations, and while holding oneself out may be sufficient to prove the existence of a business or a course of dealings in business.

Section 2, which is the so-called aiding and abetting section of Title 18 of the United States Code, as cited in both Counts 1 and 2, provides that,

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

Charge of the Court

In other words, every person who wilfully participates in the commission of a crime may be found guilty of that offense. Participation is wilfull if done voluntarily and intentionally, and with a specific intent to do something the law forbids, or with a specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act of omission of his to make the criminal venture succeed.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something, the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond a reasonable cout that every element of the offense as defined in these instructions

Charge of the Court

was committed by some person or persons, and that the defendant participated in its commission.

Here presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

Now, as is charged in Count Number 3 and 4 of the indictment, and I'll read them consecutively, that in Count 3, on or about and between the 13th day of December 1975 and the 5th day of April 1976, such dates being approximate and inclusive, the defendant, Peter Jakakas and Dennis T. Baker did combine, conspire, confederate and agree together to commit an offense against the United States in violation of Title 18 United States Code Section 842 (a) (1) and (2) which I read to you, by conspiring to engage in the business of dealing in explosive materials, to wit, TNT, neither defendant having at such times a license issued pursuant to Chapter 40, Title 18, the United States Code.

I might add with respect to the question of the license issued pursuant to Title 18 of the United States Code, there is no dispute and the only evidence

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is that the defendant did not have the requisite license, and that pertains to all of the first four counts. In furtherance of said conspiracy, and in order to effectuate the purposes thereof, there was committed the following.

Overt acts, number one, on or about the 13th day of December 1975, within the Eastern District of New York, the defendant Peter Jakakas and one Dennis T. Baker met together, all in violation of Title 18, United States Code, Section 371.

Count Number 4 reads as follows, that on or about and between the 13th day of December 1975 and the 5th day of April 1976, such dates being approximate and inclusive, the defendants Peter Jakakas and Dennis T. Baker, did with Valerie Jakakas named herein as a co-conspirator but not as a co-defendant, none of whom were at such times a licensed importer, licensed manufacturer or licensed dealer, combine, conspire, confederate and agree to commit the offenses against the United States in violation of Title 18, United States Code, Section 922 (a) (1) and (2), by conspiring to engage in the business of dealing in firearms and ammunition. In furtherance of the said conspiracy and in order to effectuate the purposes thereof, there

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was committed the following overt acts.

Number one, on or about the 12th day of January 1976 within the Eastern District of New York, the defendant Peter Jakakas and Dennis T. Baker met together with Valerie Jakakas.

Now, Section 371 of Title 18 of the United States Codes provides in pertinent part that, "If two or more persons conspire either to commit any offense against the United States or any agency thereof in any manner or for any purpose, and one or more of such persons do act to effect the object of the conspiracy, each shall be in violation of the law.

The following are the essential elements which are to be required to be proven beyond a reasonable doubt in order to establish the offense of the conspiracy charged in the indictment. One, that there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment. Two, that the conspiracy described was willfully formed and existing at or about the time alleged. Three, that the conspiracy was so willfully formed and existing for the purpose of engaging in the business of dealing in explosive materials, to wit, TNT, the defendant not having a Federal license as required by

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law. Four, that the defendant willfully became a member of the conspiracy. Five, that one of the conspirators knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged. Six, that such overt act was knowingly done in furtherance of the object of the conspiracy charged, and seven, that the defendant was knowingly and willfully a member of the conspiracy with the intent to further one of its objectives.

If the jury should find beyond a reasonable doubt from the evidence in the case that the existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete, and it is complete as to every person found by the jury to have been willfully a member of the conspiracy at the time the overt act was committed.

The following are the essential elements which are required to be proven beyond a reasonable doubt in order to establish the offense charged in Count 4 of the indictment:

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1) That there was an agreement or conspiracy between two or more persons to violate the law as charged in the indictment; 2) That the conspiracy described in the indictment was willfully formed and existed at or about the time alleged; 3) That the conspiracy was so willfully formed and existing for the purposes of knowingly and willfully engaging in the business of dealing in firearms and ammunition without a federal license as required by law; 4) That the defendant willfully became a member of the conspiracy; 5) That one of the conspirators thereafter, knowingly committed one of the overt acts charged in the indictment at or about the time and place alleged; 6) That such overt act was knowingly done in furtherance of the object of the conspiracy as charged; and 7) That the defendant was knowingly and willfully a member of the conspiracy with the intent to further one of its objectives.

If the jury should find beyond a reasonable doubt from the evidence in the case that the existence of the conspiracy charged in Count 4 of the indictment has been proved, and that during the existence of the conspiracy, one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance

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2 of some object or purpose of the conspiracy, then
3 proof of the conspiracy offense charged is complete, and
4 it is complete as to every person found by the jury
5 to have been willfully a member of the conspiracy at
6 the time the overt act was committed.

7 Now, I am going to give you in a moment or two,
8 and I will call your attention to it when I get there,
9 a definition of conspiracy and more details with
10 respect to conspiracy, but I want to go back before we
11 reach that to Count 5 of the indictment which charges
12 that on or about the 13th day of December 1975 within
13 the Eastern District of New York, the defendant Peter
14 Jakakas did store explosive material, to wit, TNT, in
15 a manner not in conformity with regulations promulgated
16 by the Secretary of the Treasury or his delegate, all
17 in violation of Title 18, United States Code Sections
18 842 (j) and (2). Number two section is the aiding and
19 abetting section which I will not repeat for you.
20 Section 842 (j) provides in pertinent part, that it
21 shall be unlawful for any person to store any explosive
22 material in a manner not in conformity with regulations
23 promulgated by the Secretary. And, Section 181.186,
24 of Title 26 of the Code of Federal Regulations provides
25 in pertinent part that except as otherwise provided in

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this part, storage facilities in which any explosive materials are stored shall be located at minimum distances from inhabited buildings as specified in the American Table of Distances, and Section 181.198, of such regulations require that explosives weighing more than five pounds and less than ten pounds be stored 90 feet from an inhabited building.

The following are the essential elements of the crime charged which must be proved beyond a reasonable doubt. One, that the defendant stored explosive material. Two, that such storage was either within 90 feet of or within an inhabited building. Three, that such explosives weighed more than five pounds and less than ten pounds. And, four, that the defendant stored such explosives knowingly and willfully.

An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake, or accident, or other innocent reason.

An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do

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something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

Knowledge and intent may not be proved directly because there is no way of fathoming or scrutinizing the operation of the human mind, but you may infer the defendant's knowledge and intent from the surrounding circumstances. You may consider any statement made and done or omitted by the defendant and all other facts and circumstances in evidence which indicate his state of mind.

Now, you will recall during the first part of the trial, as I recall, that certain evidence was admitted for limited purposes only and I said that I would give you full instructions with respect to that evidence at the conclusion of the case, in addition to the proof with respect to the first two counts of the indictment, the Government offered proof with respect to claiming similar acts, for example, a sale or I should say alleged sale by the defendant of black powder and an offer by the defendant to sell plastic explosives and various machine guns to Dennis Baker.

The fact that the accused may have committed another offense at some time is not any evidence of proof whatever that after a time, the accused committed

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1 or at another time I should say, the accused committed
2 the offense charged in the indictment, even though
3 both offenses are of a like nature. Evidence as to an
4 alleged earlier or later offense of a like nature
5 may not therefore be considered by the jury in deter-
6 mining whether the accused did the act charged in the
7 indictment. Nor, may such evidence be considered for
8 any other purposes whatsoever, unless the jury first
9 find that other evidence in the case standing alone
10 establishes beyond a reasonable doubt that the accused
11 did the act charged in the indictment, leaving aside
12 only the question of whether the accused was operating
13 in accordance with a plan, scheme or design, or leaving
14 aside the question of whether the accused did the act
15 charged in the indictment knowingly and willfully and
16 not because of accident, mistake or other accidental
17 reasons.
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19

20 (Continued on next page)
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Charge of the Court

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PK:rsr
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THE COURT: If the jury should find beyond a reasonable doubt from the other evidence in the case that the accused did the act charged in the indictment then the jury may consider evidence as to an alleged earlier or later offense of a like nature, in determine whether there was a plan, scheme or design and the state of mind, knowledge or intent with which the accused did the act charged in the indictment. And where all the elements of an alleged earlier or later offense of a like nature are established by evidence which is clear and conclusive, the jury may, but is not obliged to, draw the inference and find that in doing the act charged in the indictment the accused acted pursuant to a plan, scheme, design, willfully, knowingly, and with specific intent, and not because of mistake or accident or other innocent reason.

Now, a moment ago I said I would go back and define conspiracy and I have now reached that point so I am going to go back to Count 3 and 4 of the indictment.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose. So, a conspiracy is a kind of

Charge of the Court

"partnership in criminal purposes", in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy. Mere association may not in and of itself be the basis for an inference of guilt of conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding

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to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods which were agreed upon, were actually used or put into operation; not that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that two or more persons, including the accused, were knowingly members of the conspiracy as charged in the indictment.

In your consideration of the evidence in the case as to the offense of conspiracy charge, you should first determine whether or not the conspiracy existed, as alleged in the indictment. If you conclude that the conspiracy did exist, you

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2 should next determine whether or not each of the
3 accused wilfully became a member of the conspiracy.

4 If it appears beyond a reasonable doubt
5 from the evidence in the case that the conspiracy
6 alleged in the indictment was wilfully formed,
7 and that a defendant wilfully became a member of
8 the conspiracy either at its inception or afterwards,
9 and that thereafter one or more of the conspirators
10 committed one or more overt acts in furtherance of
11 some object or purpose of the conspiracy, then there
12 may be a conviction even though the conspirators
13 may not have succeeded in accomplishing their
14 common object or purpose and in fact may have failed
15 so doing.

16 The extent of any defendant's participation
17 moreover, is not determinative of his guilt or
18 innocence. A defendant may be convicted as a
19 conspirator even though he may have played only
20 a minor part in the conspiracy.

21 An "overt act" is any act knowingly committed
22 by one of the conspirators, in an effort to effect
23 or accomplish some object or purpose of the con-
24 spiracy. The overt act need not be criminal in
nature, if considered separately and apart from the

conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, or using a telephone. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme, it must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

One may become a member of the conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find the defendants or any other person has become a member of the conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant or other person who claimed to have been a member, willfully participated in the unlawful plan, with the intent to advance or further some object or purpose of conspiracy.

To act or participate willfully means to act or participate voluntarily or intentionally

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1 and with specific intent to do something the law
2 forbids. . . that is to say, to act or participate
3 with the bad purpose either to disobey or to dis-
4 regard the law. So, if a defendant or any other
5 person, with understanding of the unlawful character
6 of the plan, knowingly encourages, advises or
7 assists, for the purpose of furthering the under-
8 taking or scheme, he thereby becomes a willful par-
9 ticipant -- a conspirator.

10
11 One who willfully joins in an existing
12 conspiracy is charged with the same responsibility
13 as if he had been one of the originators or
14 instigators of the conspiracy.

15 In determining whether a conspiracy existed,
16 the jury should consider the actions and the
17 declarations of all the alleged participants.
18 However, in determining whether a particular
19 defendant was a member of a conspiracy, if any,
20 the jury should consider only his acts and statements.
21 He cannot be bound by the acts or declarations of
22 other participants until it is established that a
23 conspiracy existed, and that he was one of its
24 members.

25 Whenever it appears beyond a reasonable

Charge of the Court

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doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements thereafter knowingly made and the acts knowingly done, by any person likewise found to be a member, may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts made may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuancy of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

Otherwise, any admission or incriminatory statement made or act done outside of the court by one person, may not be considered as evidence against any person who is not present and did not hear the statement made or see the act done. Therefore, statements or any conspirator which are not in furtherance of the conspiracy or made before it existed or after its termination may be considered as evidence only against the person that makes them.

Now, Coun 3 of the indictment charges that

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there was a conspiracy among the defendant and Dennis T. Baker, and Counr 4, among the defendant and his wife and Dennis T. Baker. A person cannot conspire with himself and therefore you cannot find that the defendant is guilty unless you find beyond a reasonable doubt that he participated in the conspiracy as charged, with at least one other person.

Statements and arguments of counsel are not evidence in the case. I said that to you several times, unless made in an admission or stipulation of fact when the attorneys on both sides stipulate or agree as to the existence of a fact. You must, and unless otherwise instructed, accept the stipulations as evidence and regard that fact as proved unless you are instructed otherwise.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses regardless of who may have called them and all exhibits received in evidence regardless of who may have produced them and all facts which may have been admitted or stipulated. Any evidence as to which an

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objection was sustained by the Court and any evidence ordered stricken by the Court must be entirely disregarded. Evidence does include, however, what is brought out from witnesses on cross-examination as well as what is testified to on direct examination. Unless otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based on the evidence only. But, in your consideration of the evidence you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been proved such reasonable inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from facts which have been established by evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact; the lawyer's

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statements are not evidence.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness's ability to observe the matters as to which he has testified and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more

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persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood. That you in your own judgment will give the testimony of each witness the credibility, if any, that you think it deserves.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with great caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice.

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1 unless you believe that unsupported testimony beyond
2 a reasonable doubt.

3 The law does not prohibit the use of an
4 accomplice, but whether you approve of their use
5 is not to enter into your consideration of this
6 case. In certain types of crime the government,
7 of necessity, is frequently compelled to rely upon
8 the testimony of accomplices, persons with criminal
9 records, or informers. Otherwise, it would be dif-
10 ficult to detect or prosecute some wrongdoers,
11 and this is particularly true in conspiracy cases.
12 Often it has no choice in the matter. It must
13 take the witnesses to the transaction as they are.

14 It is the universal rule in the Federal Courts
15 that defendants may be convicted on testimony of an
16 accomplice standing alone if you believe such
17 testimony beyond a reasonable doubt. This would
18 still be so even though the accomplice was a con-
19 firmed criminal.

20 The testimony of a witness may be discredited
21 or impeached by showing that he previously made
22 statements which are not consistent with his present
23 testimony. The earlier -- strike that. It is the
24 province of the jury to determine the credibility,
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2 if any, to be given the testimony of a witness who
3 has been impeached. If a witness is shown knowingly
4 to have falsely sworn concerning any material matter
5 you have a right to disregard such witness's testimony
6 and you may reject all of the testimony of that
7 witness, or give that testimony such credibility
8 as you may think it deserves.

9 The law does not compel a defendant in a
10 criminal case to take the witness stand and testify,
11 and no presumption of guilt may be raised nor no
12 inference of any kind may be drawn from the failure
13 of a defendant to testify. As stated before, the
14 law never imposes upon a defendant in a criminal case
15 the burden or duty of calling any witnesses or
16 producing any evidence.

17 It is the duty of the attorneys on each
18 side of a case to object when the other side offers
19 testimony or other evidence which the attorney
20 believes is not properly admissible. You should not
21 show prejudice against an attorney or his client
22 because the attorney has made objections.

23 Upon allowing the testimony or other evidence
24 to be introduced over the objection of an
25 attorney, the Court does not, unless expressly

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2 stated, indicate any opinion as to the weight or
3 effect of such evidence. As stated before, the
4 jurors are the sole judge of the credibility of all
5 witnesses and the weight and effect of all evidence.

6 When the Court has sustained an objection
7 to a question addressed to a witness the jury must
8 disregard the question entirely, and may draw no
9 inference from the wording of it, or speculate as
10 to what the witness would have said if he had been
11 permitted to answer any question.

12 The fact that the Court has asked one or more
13 questions of a witness for clarification or ad-
14 missibility of evidence must not be taken by you in
15 any way as indicating that the Court has any opinion
16 as to the guilt or innocence of the defendant in this
17 case, and you are to draw no inference therefrom.
18 That determination is up to you and to you alone,
19 based upon all of the facts in the case and the
20 applicable law in the instructions.

21 You are here to determine the guilt or
22 innocence of the accused from the evidence in the
23 case. You are not called upon to return a verdict
24 as to the guilt or innocence of any other person
25 or persons. So, if the evidence in the case

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2 convinces beyond a reasonable doubt of the guilt of
3 the accused, you should so find, even though you
4 may believe one or more other persons are guilty.
5 But if any reasonable doubt remains in your minds
6 after impartial consideration of all the evidence
7 in the case, it is your duty to find the accused
8 not guilty.

9 The verdict must represent the considered
10 judgment of each juror. In order to return a verdict,
11 it is necessary that each juror agree thereto. Your
12 verdict must be unanimous.

13 It is your duty, as jurors, to consult with
14 one another, and to deliberate with a view to
15 reaching an agreement, if you can do so without
16 violence to individual judgment. Each of you must
17 decide the case for himself but do so only after
18 an impartial consideration of the evidence in the
19 case with your fellow jurors. In the course of your
20 deliberations, do not hesitate to reexamine your
21 own views, and change your opinion, if convinced it
22 is erroneous. But do not surrender your honest
23 conviction as to the weight or effect or evidence,
24 solely because of the opinion of your fellow jurors,
25 or for the mere purpose of returning a verdict.

Charge of the Court

Remember at all times, you are not partisans. You are judges -- judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclination of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

You must render a verdict with respect to each of the five counts of the indictment. If any reference by the Court or by counsel as to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

The punishment provided by law for the offenses

Charge of the Court

charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Upon returning to the jury room, juror No. 1 will act as your foreman unless he chooses not to so act, that is the gentleman seated closes to me. If he chooses not to do so, you then can elect one other of your member as your foreman and he will preside over your deliberation and will be your spokesman here in court.

If it becomes necessary during your deliberations to communicate with the Court, you may send in a note by way of the Deputy Marshal who will be assigned, by way of your foreman, or by one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury on any subject touching on the merits of the case otherwise than in writing, or orally here in open court.

You will note from the oaths shortly to be taken by the Deputy Marshals that they too, as well as

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all other persons, are forbidden to communicate in any way or manner with members of the jury on any matter touching upon the merits of the case. Now, bear in mind also that you are never to reveal to any person, not to me, the Court, how the jury stands numerically or otherwise on the question of the guilt or innocence of the accused until after you have arrived at a unanimous verdict. Do not send me a note saying that we stand six to four, or such and such, or vice versa.

If you're hopelessly deadlocked, which I hope never occurs, then write me a note and say, "Hopelessly deadlocked." Don't tell me how you stand. When and if you reach a unanimous verdict with respect to each of the counts, provide me with a note and state, "We have reached a unanimous verdict with respect to each of the counts," and you will announce your verdict here in open court, not in a note to me.

Those are the instructions of the Court, and consider them as a whole. As I said at the outset, consider them in the same way that you consider the evidence and the exhibits as a whole, and I am going to take a few minutes now to discuss these

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2 instructions with the attorneys, and I will recall you
3 and the alternate jurors will be discharged, and then
4 I will give you the opportunity to deliberate on the
5 question, but not before then. So, now don't discuss
6 the case and we'll have a five-minute recess.

7 (Jury excused.)

8 MS. SHEPARD: Your Honor, you charged in the
9 offer of selling machine guns that it was a similar
10 act; I think that's actually a substantive count on
11 Count Two, part of the crime of dealing in firearms.

12 THE COURT: I'll take that back.

13 MS. SHEPARD: It's also within the period, it
14 was after the sale of the TNT on December the 13th.

15 THE COURT: I thought some of the machine guns--
16 I guess you're right. All right.

17 MS. SHEPARD: The only other question I have is
18 whether or not the jury should be advised that although
19 the evidence with respect to the defendant not having
20 a license, not being controverted, that they still
21 have to make a final --

22 THE COURT: Ms. Seltzer conceded it in her
23 requested charge.

24 MS. SELTZER: It's not in controversy.

25 MS. SHEPARD: I have no other objections.

1 MS. SELTZER: Your Honor, when you charged reasonable
2 doubt, you said that they'd have to look at the whole
3 case and not each bit of evidence, but I would ask
4 that they be told that the government has to prove each
5 and every element of any crime.

6 THE COURT: I so charged.

7 MS. SELTZER: I didn't take it up in that manner.

8 THE COURT: Everybody says I don't so charge,
9 but when they read it back they take back that objection.

10 MS. SELTZER: I would, of course, object to
11 the entire charge regarding the prior similar acts; my
12 position is that these were not prior similar acts.

13 THE COURT: I understand, you have done that
14 before.

15 MS. SELTZER: And as far as the charge in deal-
16 ing, the business of dealing, I would just object to
17 the expression when you say "no minimum number of
18 sales must be shown." I would -- it's my position the
19 case law is to the opposite, there must be a minimum
20 number of sales shown.

21 THE COURT: I believe I said one such sale may
22 not be sufficient.

23 MS. SELTZER: I also have my previous motions
24 to dismiss two counts and I would renew that motion.

25 THE COURT: Counts Four or Five?

1 MS. SELTZER: Four, the overt act charged, is
2 that on or about the 12th day of January 1976, the
3 defendant Dennis T. Baker and Peter Jakakas met with
4 Valerie Jakakas. It's my recollection of the testimony
5 that there was no such testimony of such an overt act
6 and on that ground I would move to dismiss.

7 THE COURT: Motion is denied.

8 Bring the jury back.

9 (Jury seated in jury box.)

10 THE COURT: I have one correction to make with
11 respect to my charge, ladies and gentlemen, and it
12 pertains to the limiting instruction that I gave you
13 with respect to the so-called prior similar acts.

14 The government points out that the offer to
15 sell the various machine guns is a part of the sub-
16 stantive count, Count Number 2, and should not have
17 been included in the prior similar acts, and I stand
18 corrected on that, as to the existence of a prior
19 similar act on the alleged sale by the defendant of
20 the black powder and the alleged offer by the defendant
21 to sell plastic explosives to Dennis Baker. And, with
22 that one correction, the charge stands.

23 Now, as to the alternate, your time has come.
24 Unfortunately you can't sit on the case itself. How-
25 ever, since it's 1:00 o'clock and if you wish to order

1 lunch from the marshal you may do so, but you will
2 have to pick up your belongings from here and go on
3 your way out, go into my witness room, which is just
4 opposite this door here labeled, "Judge Platt's
5 Witness Room." The marshal will take your order for
6 lunch and it should be here fairly shortly and then
7 you can get it and go back down to the Central Jury
8 Room with the thanks of the Court for your attention
9 to this case and for the work that you have performed
10 on behalf of your fellow citizens in the community.
11 As I say, you should pick up whatever you have in the
12 jury room and then you are excused. Be sure to check
13 out with the Central Jury Part. You may go.

14 (Alternate excused.)

15 THE COURT: Please bring up the marshals and
16 swear them.

17 (Two marshals sworn in by the Deputy Clerk.)

18 THE COURT: Now, the first order of business,
19 ladies and gentlemen, is right after you get into the
20 jury room will be to hand your lunch orders to the
21 marshal. It will take maybe a half-hour to so to get
22 the lunch up to you and I realize you must be getting
23 a little hungry by now, and right after you get the
24 lunch orders you may begin your deliberations on the
25 case.

1 I am going to let the attorneys go to lunch now,
2 between one and two, and they will be back at two. If
3 you need to start asking questions, you may start ask-
4 ing questions after that, and hopefully you won't have
5 to. I guess you are all ready now with the papers and
6 everything else, so if you do need anything, as I said,
7 just write a note to the marshal.

8 Now you may discuss the case.

9 (Jury leaves for deliberations.)

10 THE COURT: Okay, we'll see you at 2:00 o'clock.

11 (Luncheon recess held.)
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Paula
J. J. Moore